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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,203	02/27/2004	Leonard Forbes	303.356US4	9063
21186	7590	11/16/2005	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH 1600 TCF TOWER 121 SOUTH EIGHT STREET MINNEAPOLIS, MN 55402			WILSON, ALLAN R	
			ART UNIT	PAPER NUMBER
			2815	

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/789,203

Applicant(s)

FORBES ET AL.

Examiner

Allan R. Wilson

Art Unit

2815

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 37-51, 58 and 59 is/are allowed.
- 6) ☒ Claim(s) 1-36, 52-57 and 60-64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
- Paper No(s)/Mail Date 101305 & 102005.

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 11-16, 18, 19, 21-25, 28, 30-34, 36, 52-57 and 60-64 are rejected under 35 USC § 102(b) as being anticipated by Japanese Patent Application No. 6-13626 (hereafter “JPA ‘626”).

With regards to claim 1, 12, 22, 31, 36 and 52, JPA ‘626 illustrates in figures 1-4, particularly figure 1, (entire machine translated document) forming a memory device comprising a non-metal floating gate (storage electrode) 19 of e.g. LaB<sub>6</sub>, which has an electron affinity (work function) of about 2.8 eV (paragraph 22), and an insulation layer 3 of silicon dioxide or silicon oxidation nitride such that a barrier energy between them is less than 3.3 eV (1.9 eV). JPA ‘626 also teaches the method of operating the device wherein data is stored by changing charge on the floating gate (paragraphs 3-17). Refreshing data based on a data charge retention time that depends upon the barrier energy is an inherent function of the device and since the prior art has the same or better material properties (electron affinity) as the claimed invention it will have the same or better inherent function (e.g. paragraph 13). It is considered inherent that the method includes a system with a processor to operate the stored data.

Art Unit: 2815

With regards to claims 2, 3, 23 32 and 53, JPA '626 discloses in paragraph 21 an insulator 17 of silicon oxidation nitride which has a permittivity higher than a permittivity of silicon dioxide.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-10, 17, 20, 26, 27, 29 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over JPA '626. Though JPA '626 taught the device and method of operating the device of claims 1, 12, 22 and 31, JPA '626 did not specifically teach the claimed operating parameters such as write/erase times, charge retention times or detected signal strength. However, these limitations are considered either inherent in the device/method of JPA '626 or obvious there over. The limitations are considered inherent because they are dependent on the materials/barrier energy for the floating gate and insulator. Because JPA '626 teaches the material properties as instantly taught by applicant and thus achieves a device having the claimed barrier energy, the claimed operating parameters, which are dependent on the barrier energy, are considered inherent. Alternately, the claimed operating parameters are considered merely optimization of that which is known in the art. Faster operation of a device by means of e.g. write/erase times achieves quicker and thus improved performance. As such, the limitations are considered obvious.

Art Unit: 2815

***Allowable Subject Matter***

Claims 37-51, 58 and 59 are allowed.

***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new grounds of rejection.

Any inquiry concerning this communication or earlier communications from an examiner should be directed to Primary Examiner Allan Wilson whose telephone number is (571) 272-1738. Examiner Wilson can normally be reached 7:00-4:00 Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Thomas can be reached on (571) 272-1664. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Allan R. Wilson  
Primary Examiner  
14 November 2005